

CIVIL SERVICE COMMISSION MINUTES

JULY 6, 2005

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

A.Y. Casillas
Barry I. Newman
Francesca Krauel
W. Dale Bailey

Absent was: None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer
William D. Smith, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission
August 3, 2005

**COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
July 6, 2005**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San
Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,6,7,10,11,15,17	13,14	8	11

COMMENTS: Motion by Newman to approve all items not held for
discussion; seconded by Krauel. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.**

A. Commissioner Krauel: Julie Buechler, Esq., on behalf
of **2005-05**, appealing an Order from the Sheriff's
Department.

B. Commissioner Casillas: **Arlesia Graham**, former
Detention Processing Supervisor, appealing an Order to
Terminate and Charges from the Sheriff's Department.

**OPEN SESSION AGENDA
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda
items unless additional time is requested at the outset and
approved by the Commission President.

MINUTES

1. Approval of the Minutes of the regular meeting of June 1,
2005.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Casillas: Julie Buechler, Esq. on behalf of **2005-06**, appealing an Order from the Sheriff's Department.

Confirmed.

3. Commissioner Krauel: Donna Chark-Richardson, SEIU Local 2028, on behalf of **Ray Scott**, Senior Cook, appealing two (2) Orders of Pay Step Reduction and Amended Charges from the Sheriff's Department.

Confirmed.

4. **Vanessa S. Feaster**, former Social Worker V, appealing an Order of Automatic Separation for Failure to Return After Leave from the Health and Human Services Agency (HHSA).

RECOMMENDATION: Deny Request.

Staff recommendation approved.

DISCIPLINES

Findings

5. Commissioner Krauel: Julie Buechler, Esq., on behalf of **2005-05**, appealing an Order from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2005-05, from a written Order of Discipline from the Sheriff's Department was presented to the Civil Service Commission. The Commission appointed Commissioner Francesca Krauel to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Having been duly noticed, the evidentiary hearing was conducted by the Hearing Officer on May 31, 2005. Based on the Findings and Conclusions of the hearing officer, it is hereby recommended that the Sheriff's Order of Discipline transferring Employee from a specialized unit to Court Services be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Krauel to approve Findings and Recommendations; seconded by Bailey. Carried.

6. Commissioner Casillas: **Arlesia Graham**, former Detention Processing Supervisor, appealing an Order to Terminate and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Arlesia Graham, from a written Order to Terminate and Charges terminating her from her class and position of Detention Processing Supervisor (Class No. 2728) in the Sheriff's Department was presented to the Civil Service Commission. The Commission appointed A. Y. Casillas, one of its members, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on June 13, 2005.

The Appellant was a Detention Processing Supervisor at the Central Jail who willfully violated the Sheriff's Department policy against associating with convicted felons. Employee entered into a relationship, and then married, a convicted felon, all while he was incarcerated in a State prison. While Employee had a record of good performance and no prior discipline, the blatancy and permanence of the policy violation merits affirming the Department's Order of Termination. It is therefore recommended that the Order to Terminate and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Bailey. Carried.

INVESTIGATIONS

Findings

7. Commissioner Newman: **Tommy L. Coone**, Licensed Vocational Nurse, HHSA, Rule XI investigation regarding the conduct and operations of the Department of Human Resources (DHR) and the HHSA as they pertain to his employment status at the Psychiatric Hospital.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on April 20, 2005 the Commission appointed Barry I. Newman, one of its members, to conduct an investigation under the provisions of Civil Service Rule XI and submit findings, conclusions, and recommendations to the Civil Service

Commission. Commissioner Newman conducted an investigation on June 16, 2005 by reviewing documents and receiving testimony from the parties.

Employee Tommy Coone was a Licensed Vocational Nurse employed by the Health and Human Services Agency at the County Psychiatric Hospital. He was injured at work responding to an emergency patient situation. His injury resulted in surgery and time off from work. He returned to work and worked largely without accommodation for six months until the Agency forced him to take leave. The basis for the Agency's decision to force leave was a report by his treating physician diagnosing him with 25% to 50% losses in certain physical functions compared to his "preinjury capacity". However the report stated he was "able to perform his usual and customary occupation." The Agency unreasonably interpreted the first comment to mean he could not perform his essential job functions and ignored the latter comment. The Agency also ignored the fact that he was actually performing his job functions without restriction or accommodation. Employee pursued a number of avenues to try to reclaim his position, ultimately requesting a Rule XI investigation by the Commission. Shortly after being provided with a copy of the complaint, the Agency restored Employee to his position. However, the Agency disallowed payment of back pay and benefits claiming that Employee failed to fully mitigate his damages and timely pursue his rights. Accordingly, the Commission investigation concentrated on the issue of back pay and benefits. It was determined that the Agency was primarily at fault, both for erroneously forcing Employee to take leave and for the delay in restoring him to his position. On the other hand, Employee shared some blame for not providing a new doctor's report to the Agency which ultimately helped restore him to his job. It is therefore recommended that Employee will be awarded back pay, benefits, Quality First payments, and interest from the date of January 9, 2004, minus any wages he received from outside employment, minus any back pay or benefits already reimbursed to him, minus vocational rehabilitation maintenance allowance received and minus a back pay deduction for February 1, 2005 to March 28, 2005 for failure to mitigate referred to above; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and
Recommendations; seconded by Bailey. Carried.**

DISCRIMINATION

Complaints

8. James C. Stevens, Esq., on behalf of **Esti Stevens**, Administrative Analyst III, alleging non-job related discrimination (past community work) by the HHSA. (See item #9 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Bailey assigned.

SELECTION PROCESS

Appeals

9. James C. Stevens, Esq., on behalf of **Esti Stevens**, Administrative Analyst III, appealing her non-selection for the classification of Departmental Personnel Officer II by the HHSA. (See item #8 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation.

Staff recommendation approved.

10. **Jesus Lopez**, Human Services Specialist, appealing his non-selection for the classification of Social Worker III by the HHSA. (Continued from the June 1st Commission meeting.)

RECOMMENDATION: Deny Request.

This matter was continued from the June 1, 2005 Commission meeting, to allow Mr. Lopez the opportunity to provide HHSA with information that he believed would support his appeal and for HHSA to review the additional information.

Bob Gerard and Debra Zanders-Willis representing HHSA, explained that although Mr. Lopez may be appropriate as an SWIII in another program, he is not a suitable candidate for CWS services at this time.

Motion by Newman to accept staff recommendation; seconded by Krauel. Carried.

11. **Randall Dibb**, Deputy Sheriff, appealing the DHR's and the Sheriff's Department's administration of the selection process (regarding the notification process and time frame for filing applications) for the classification of Sheriff's Sergeant.
(Continued from the June 1st Commission meeting.)

RECOMMENDATION: Deny Request.

Randall Dibb addressed the Commission, informing the Commission that he was withdrawing the above-referenced Rule X selection process appeal.

Withdrawn.

Findings

12. **Kenneth W. Finney**, appealing the removal of his name by the Department of Human Resources from the employment list for Sheriff's Deputy Detentions/Court Services.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 12 ratified.

CIVIL SERVICE RULES

13. **Carlos Arauz**, Director, DHR, requesting the Commission's review of proposed Rule revisions and transmittal to the Board of Supervisors. (Continued from the May 18th and June 1st Commission meetings.)

RECOMMENDATION: Continue to the next Commission meeting

Carlos Arauz, DHR Director, requested that the proposed Rule revisions be voted upon at the next meeting.

Continued.

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OTHER MATTERS

Performance Appraisal

14. **Stacie Neldaughter**, Deputy Public Administrator-Guardian, requesting an investigation into HHSA's handling of an appealed Performance Appraisal for the period March 1, 2002 to March 1, 2003 as well as a Performance Appraisal for the period March 2, 2003 to March 1, 2004.

RECOMMENDATION: Continue to the next meeting at the appellant's request.

Continued.

Ratification of Medical Provider

15. Ratification of **Philip Azer, M.D.**, as an additional name to the list of medical providers to be used for fitness for duty examinations at the request of DHR.

RECOMMENDATION: Ratify.

Charles Nares, Deputy Director, was asked by Commissioner Newman to verify the number of years the medical provider had been in private practice. Mr. Nares verified that Dr. Azer had been in private practice since 1982.

Motion by Newman to ratify Medical Provider; seconded by Krauel. Carried.

Extension of Temporary Appointments

16. Health and Human Services Agency

- A. 1 Residential Care Worker I (Vanessa Rico)
- B. 2 Residential Care Workers II (Sheila Macres, Shontanette Liggins-Henderson)

RECOMMENDATION: Ratify Item No. 16.

Item No. 16 ratified.

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17. **Steven J. Carroll**, Public Defender, requesting to ratify the extension of temporary appointments for five (5) Deputy Public Defenders I (Isaac Blumberg, Denis Lainez, Richard Longman, Kristin Scogin and Saba Sheibani), whose temporary appointments are set to expire on August 10, 2005, and addressing concerns of the Commission relating to those temporary appointments and the effect of the 2004 suborganizational layoffs within the Department of the Public Defender.

Steven Carroll, the Public Defender, briefly explained the suborganizational layoffs in 2004 and the need for temporary appointments. However, he further explained that this request is moot since the above Deputy Public Defenders will all become permanent prior to August 10, 2005.

18. Public Input.

ADJOURNED: **3:30 p.m.**

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: AUGUST 3, 2005